

TO: David M. Spooner
Assistant Secretary
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FROM: Ronald Lorentzen
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for Policy and Negotiations
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RE: Issues and Decision Memorandum for the Final Results of the Expedited
Sunset Review of the Agreement Suspending the Antidumping Duty Investigation
of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation

Summary

We have analyzed the substantive response of the domestic interested parties in the sunset review of the Agreement Suspending the Antidumping Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation (Suspension Agreement). We recommend that you approve the positions described in the **Discussion of the Issues** section of this memorandum. Below is the complete list of the issues in this expedited sunset review for which we received comments from the domestic interested parties. Respondent interested parties did not comment.

1. Likely Effects of Termination of the Suspension Agreement and Underlying Investigation
2. Magnitude of Margin Likely to Prevail if the Suspended Investigation is Terminated

History of the Suspension Agreement

On October 24, 1997, the Department of Commerce (the Department) and the Ministry of Foreign Economic Relations and Trade of the Russian Federation entered into an agreement suspending the antidumping duty investigation on certain cut-to-length carbon steel plate (CTL Plate) from the Russian Federation (Russia).¹ Upon the request of petitioners, the investigation was continued and the Department made an affirmative final determination of sales at less than fair value.² Likewise, the International Trade Commission (ITC) continued its

¹ Suspension of Antidumping Duty Investigation: Certain Cut-to- Length Carbon Steel Plate From the Russian Federation, 62 FR 61780 (November 19, 1997).

² Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 62 FR 61787, 61794 (Nov. 19, 1997).

investigation and made an affirmative determination of material injury to an industry in the United States.³

On June 6, 2002, based on the evidence of Russian economic reforms to that date, the Department revoked Russia's status as a non-market economy country under section 771(18)(B) of the Tariff Act of 1930, as amended (the Act). On December 20, 2002, a revised suspension agreement pursuant to section 734(b) of the Act was signed by the Department and three Russian CTL Plate producers: JSC Severstal (Severstal), JSC Magnitogorsk, Iron and Steel Works, and JSC NOSTA, Integrated Iron-Steel Works. The effective date of the Suspension Agreement was January 23, 2003.⁴

On January 8, 2003, in the sunset review of the 1997 suspension agreement, the Department determined that termination of the suspended antidumping duty investigation underlying the suspension agreement on CTL Plate from Russia would likely lead to continuation or recurrence of dumping.⁵ On September 4, 2004, the ITC determined that termination of the suspension agreement would likely lead to continuation or recurrence of material injury to the industry in the United States within a reasonably foreseeable time.⁶

On May 14, 2008, the Department concluded an administrative review of the Suspension Agreement with respect to CTL Plate from Russia.⁷ We found that Severstal was in compliance with the agreement.

There have been no related findings or rulings (e.g., changed circumstances reviews, scope rulings, or duty absorption reviews) since the publication of the final results of the administrative review of the Suspension Agreement. The Suspension Agreement remains in effect.

Background

On August 1, 2008, the Department published the notice of initiation of the five-year review (Sunset Review) of the suspended antidumping duty investigation on CTL Plate from Russia.⁸

³ Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine, 62 FR 66128 (December 17, 1997).

⁴ Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 68 FR 3859 (January 27, 2003).

⁵ Cut-to-Length Carbon Steel Plate From the People's Republic of China, the Russian Federation, and South Africa: Final Results of Expedited Sunset Review of Suspended Antidumping Duty Investigations, 68 FR 1038 (January 8, 2003).

⁶ Cut-to-Length Carbon Steel Plate from China, Russia and Ukraine, Investigations Nos. 731-TA-753-756 (Review), 68 FR 52614 (September 4, 2003).

⁷ Certain Cut-to-Length Carbon Steel Plate from the Russian Federation: Final Results of Administrative Review of the Suspension Agreement, 73 FR 27795 (May 14, 2008).

⁸ Initiation of Five-Year (Sunset) Review, 73 FR 44968 (August 1, 2008).

The Department received timely notices of intent to participate in this sunset review from Nucor Corporation on August 5, 2008, from SSAB North America Division (SSAB N.A.D.), Evraz S.A. Oregon Steel Mills (OSM) and Evraz S.A. Claymont (Claymont) on August 15, 2008, and from ArcelorMittal USA, Inc. on August 18, 2008, in accordance with 19 CFR 351.218(d)(1)(i). All parties claimed domestic interested party status under section 771(9)(C) of the Act, stating they are manufacturers in the United States of the domestic like product. We received no notices of intent to participate from respondent interested parties with respect to this proceeding.

On August 29, 2008, all aforementioned domestic interested parties jointly submitted a timely substantive response within the deadline specified in 19 CFR 351.218(d)(3)(i). At the request of the Department, on September 11, 2008, SSAB N.A.D., OSM and Claymont submitted a clarification to their notice of intent to participate. Pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), because no respondent interested party provided a notice of intent to participate, the Department determined to conduct an expedited (120-day) sunset review of the suspended antidumping duty investigation on CTL Plate from Russia.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted a sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making these determinations, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the period before, and the period after, the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act states that the Department shall provide to the ITC the magnitude of dumping likely to prevail if the order were revoked. Below we address the comments of the interested parties.

1. Likely Effects of Termination of the Suspension Agreement and Underlying Investigation

Interested Party Comments

The domestic interested parties contend that termination of the suspended antidumping duty investigation on CTL Plate from Russia would likely lead to continuation or recurrence of dumping. With respect to import volumes, the domestic interested parties note that import volumes of CTL Plate to the United States have declined significantly since the investigation and adoption of the suspension agreement in 1997.

Domestic interested parties provided import data released by the ITC that demonstrates a substantial downward trend in imports of CTL Plate from Russia. Specifically, domestic interested parties note that in 1996, prior to the domestic producers' petition, imports of CTL Plate totaled 252,396 short tons; in 1997, following the filing of the antidumping duty petition, imports dropped to 158,509 short tons; in 1998 and 1999, following the implementation of the suspension agreement, imports dropped to 117,614 and 17,390 short tons, respectively. Domestic interested parties observe that, in the first sunset review, the Department found that a 68.7 percent decline in imports of CTL Plate from Russia from 1996 to 2001 was significant and

warrented continuation of the suspension agreement. Domestic interested parties show that imports from Russia have continued to fall. As of 2007, imports of CTL Plate from Russia totaled 37,793 short tons, a 76 percent drop from 1996. Thus, domestic interested parties assert that imports of CTL Plate from Russia have declined substantially. Accordingly, this overall reduction of imports of CTL Plate from Russia following imposition of the suspension agreement presents a reasonable indication that dumping would continue or recur were the Suspension Agreement to be terminated.

No respondent party participated or provided comments in this sunset review.

Department's Position:

In accordance with section 752(c)(1) of the Act, in a sunset review, the Department shall determine whether termination of a suspended investigation would be likely to lead to a continuation or recurrence of sales of the subject merchandise at less than fair value. In making its determination, the Department shall consider: (a) the weighted-average dumping margins determined in the investigation and subsequent reviews, and (b) the volume of imports of the subject merchandise for the period before and the period after acceptance of the suspension agreement.

Further, drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act ("URAA"), specifically the Statement of Administrative Action ("SAA"), H.R. 29 Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department's determinations of likelihood will be made on an order-wide basis. In addition, the Department indicated that it will normally determine that termination of a suspended dumping investigation is likely to lead to continuation or recurrence of dumping where: (a) dumping continued at any level above *de minimis* after the issuance of the suspension agreement, (b) imports of the subject merchandise ceased after the issuance of the suspension agreement, or (c) dumping was eliminated after the acceptance of a suspension agreement and import volumes for the subject merchandise declined significantly.⁹ The Department also recognizes that in the context of a sunset review of a suspended investigation, the data relevant to weighted-average dumping margins and import volumes may not be conclusive in determining the likelihood of future dumping. Consequently, the Department may be more likely to take other factors into consideration, provided good cause is shown.

With respect to dumping margins, the Department calculated weighted-average dumping margins in its original investigation ranging from 53.81 percent for Severstal and a Russian-wide rate of 185.00 percent. No more recently calculated margins exist. As such, we find the weighted-average dumping margins determined in the suspended investigation demonstrative of

⁹ See, e.g., Folding Gift Boxes from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 16765 (April 5, 2007), and accompanying Issues and Decision Memorandum at comment 1; see also, Pure Magnesium in Granular Form from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order, 72 FR 5417 (February, 6, 2007), and accompanying Issues and Decision Memorandum at comment 1.

the behavior of Russian manufacturers, producers, and exporters without the discipline of a suspension agreement in place.

Regarding import levels, import data released by the ITC indicates that imports declined significantly following adoption of the suspension agreement.¹⁰ The Department found that, in the five years following the January 8, 2003 sunset review, imports remained significantly lower than in 1996, the year prior to the domestic producers' petition. Indeed, imports from 2003 through 2007 ranged from less than 1 percent to 28 percent of prepetition import volumes. This decline in imports is even greater than the 68.7 percent decline found in the first sunset review which warranted continuation of the suspension agreement. Data submitted by domestic interested parties corresponds with this trend.

Based on this information, the Department finds that the continued decrease in export volumes after the issuance of the Suspension Agreement is highly probative of the likelihood of continuation or recurrence of dumping. Declining import volumes, as discussed in section 752(c)(1) of the Act, the SAA at 890, and the House Report at 63-64, after the issuance of an agreement may provide a strong indication that, absent the agreement, dumping would be likely to continue or recur if the suspension agreement were terminated.

Therefore, given the level of dumping found in the original investigation and the significant continued decline in import volumes following the issuance of the 1997 suspension agreement and the continuation of the order in 2003, we find that dumping is likely to continue or recur if the Suspension Agreement and underlying investigation were terminated.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments:

In their substantive response, the domestic interested parties recommend that, consistent with the Department's *Sunset Policy Bulletin*, the Department should provide to the ITC the margins from the original investigation.

As noted above, no respondent party participated or provided comments in this sunset review.

Department's Position:

Normally the Department will provide to the ITC the company-specific margin from the original investigation for each company.¹¹ For companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all-others" (or "Russia-wide") rate from the investigation.

¹⁰ See Appendix 1 (USITC Dataweb import statistics).

¹¹ See Persulfates from the People's Republic of China: Notice of Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order, 73 FR 11868 (March 5, 2008), and accompanying Issues and Decision Memorandum at comment 2.

In the original investigation, the Department calculated a dumping margin for Severstal, a Russian manufacturer, producer, and exporter of CTL Plate, as well as a “Russia-wide” rate of 185.00 percent. The calculated margins from the original investigation are the only calculated rates that reflect the behavior of Russian producers and exporters without the discipline of the suspension agreement in place. Furthermore, no respondent party provided information in this sunset review that would update or invalidate the calculated margins from the investigation. Therefore, pursuant to section 752(c) of the Act, the Department will report to the ITC the company-specific rates and “Russia-wide” rate from the investigation as contained in the Final Results of Expedited Review section of this decision memorandum.

Final Results of Expedited Review:

We determine that termination of the Suspension Agreement and underlying antidumping duty investigation on certain CTL Plate from Russia would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/producer/ exporter	Weighted- average margin percentage
Severstal	53.81
Russia-wide	185.00

Recommendation:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

David M. Spooner
Assistant Secretary for
Import Administration

Date

Appendix 1

Imports of Russian CTL Plate: First Unit of Quantity

U.S. Imports for Consumption

Annual + Year-To-Date Data from Jan - Sep

Quantity Description	1996	2003	2004	2005	2006	2007	2008 YTD
	<i>In Actual Units of Quantity</i>						
kilograms	228,972,391	3,394,412	647,341	2,722,908	63,467,444	34,285,656	47,408,453

Sources: Data have been compiled from tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.